

**REMARKS**

**1. Status of the Claims**

Claims 11-12, 14-16, 19-21 are pending. Claims 1-10, 13, and 17-18 have been canceled.

With the entry of the above amendments, claims 11-12, 14-16 and 19 are pending. Claims 20-21 have been cancelled. Amendments to the claims and cancellation of claims have been made without prejudice to or disclaimer of the cancelled subject matter. Applicants reserve the right to pursue the cancelled subject matter in one or more divisional and/or continuation applications.

**2. Status of Previous Election of Claims**

Election of Group II, Claims 11-19 is acknowledged. Applicants have cancelled claims 20-21, which are drawn to non-elected subject matter.

**3. Double Patenting Rejection**

Claims 11-19 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,838,470, and claims 1-10 of U.S. Patent No. 6,455,549.

Applicants respectfully traverse the rejection. The application which matured into U.S. Patent No. 6,455,549 (U.S. Application No. 10/331,508) (hereinafter "the '549 patent") was restricted and is the parent case to the instant application. The instant application pursues subject matter from a different restricted group (Group II) than that pursued in the '549 patent (Group I). In view of the restriction requirement, Applicants submit that the claims in the '549 patent are independent and/or distinct from the claims of the instant case, and it would be improper to find non-statutory-type double patenting in view of 35 U.S.C. § 121. Accordingly, Applicants respectfully request withdrawal of the non-statutory obviousness-type double patenting rejection over U.S. Patent No. 6,455,549.

Turning to the non-statutory obviousness-type double patenting rejection over U.S. Patent No. 6,838,470 (hereinafter "the '470 patent"), Applicants respectfully assert that the subject matter of the instant application differs from the subject matter of the '470 patent. First, the structure of the compound of formula (I) of the '470 patent differs from the compound of formula (I') of the current claims. Namely, E<sup>2</sup> of formula (I) of the '470 patent

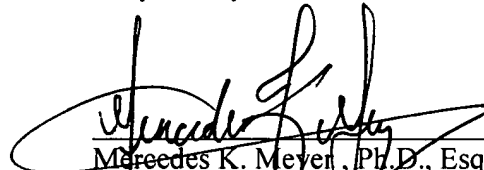
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is O, S or NR<sup>7</sup>. In the instant application, -A-B-, which corresponds to E<sup>2</sup> of formula (I) of the '470 patent has the alternatives of being a connecting bond or an alkylene as set forth in formula (I'). Thus, the genus of compounds set forth in formula (I') as claimed here differs from the genus of compounds encompassed by formula (I) of the '470 patent. Accordingly, Applicants respectfully request withdrawal of the non-statutory obviousness type double patenting rejection of claims 11-19 of the instant case over claims 1-10 of the '470 patent.

### CONCLUSION

In conclusion, this is believed to be in full response to the outstanding restriction requirement. Should any issues remain outstanding or if there are any questions concerning this paper, or the application in general, the Examiner is invited to telephone the undersigned representative at the Examiner's earliest convenience. Should any outstanding fees be owed or overpayments credited, the Commissioner is invited to respectively charge or credit Deposit Account No. 50-0573.

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Respectfully submitted,

  
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